COMMENTARY

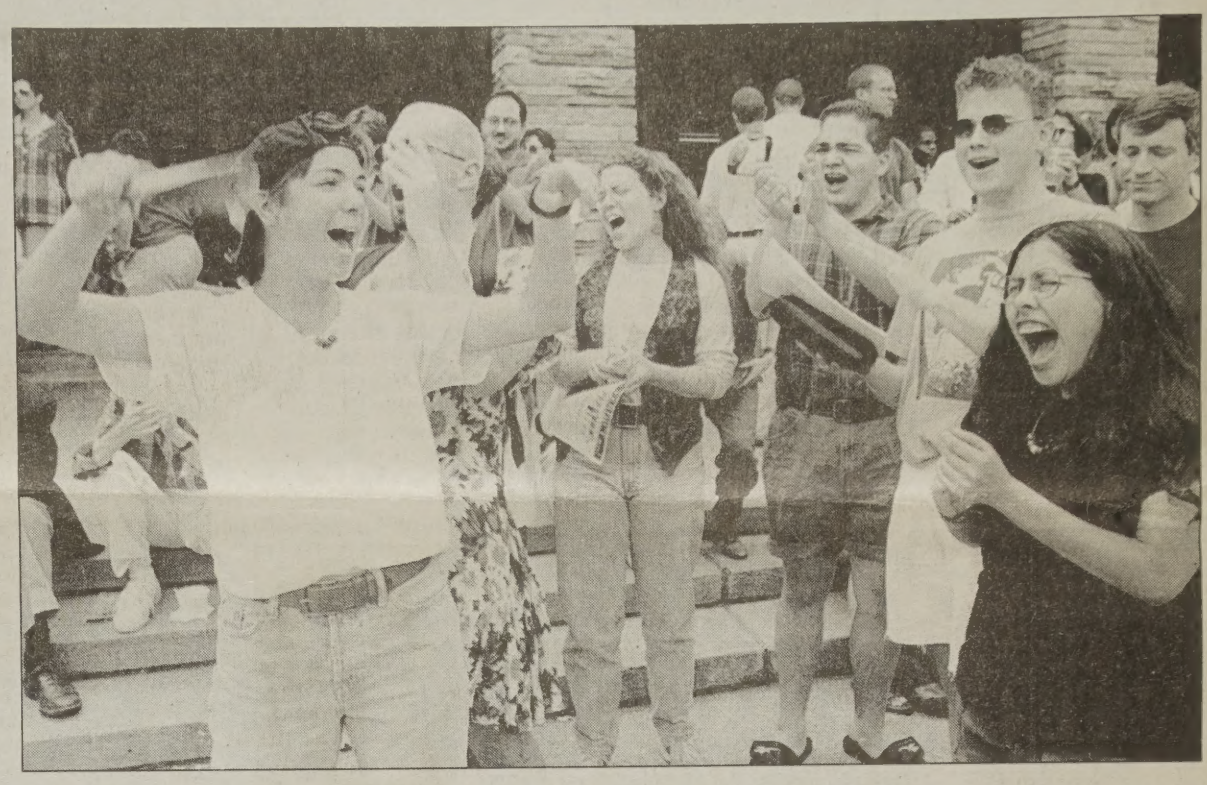
FOCUS: AMENDMENT 2'S DEMISE

The court departs from constitutional reasoning

GEORGE F. WILL

This is what constitutional law has come to. On Monday a six-person majority of the Supreme Court held that America's traditional and majority opposition to homosexuality is bigotry akin to racism. The Court held that this is not just a moral principle to which it subscribes, it is a principle suddenly excavated from the Constitution, a principle to which the nation must conform. So although a state may (under a 1986 ruling, mendaciously unmentioned by the majority) constitutionally criminalize homosexual conduct, it is suddenly unconstitutional for a state to prohibit granting special protections to homosexuals.

The six justices (Kennedy writing, joined by Stevens, O'Connor, Souter, Ginsburg and Breyer) said all this when they held that the U.S. Constitution's guarantee of "equal protection of the laws" was violated when the people of Colorado enacted by referendum an amendment to their state constitution prohibiting state and local laws banning discrimination based on sexual preference. Justice Scalia, dissenting and joined by Rehnquist and Thomas, noted the majority's "heavy reliance on principles of righteousness rather than judicial holdings," and accused the majority of concocting a constitutional impediment to a legitimate and traditional social goal, that of preventing "piecemeal deterioration of the sexual morality favored by a majority."



University of Colorado at Boulder students cheer the death of Amendment 2.

In 1992 a majority of Coloradans became provoked by the aggressive and successful campaigns of homosexuals and bisexuals for state and local laws protecting them against discrimination in jobs, housing, public accommodations and other transactions. Supporters of the amendment said such laws violate privacy, associational, religious and economic rights and liberties, and cumulatively constitute endorsement of the idea that homosexuality is a matter of moral indifference.

Colorado's supreme court declared the amendment an unconstitutional infringement of the right of homosexuals to "participate" in the political process. But the amendment did not prevent homosexuals from pressing their agenda. It simply meant that to do so, they must counter the success of their opponents by amending the state constitution. (The Court's reasoning has preposterous implications. For example, by that reasoning the Establishment Clause of the First Amendment is incompatible with the "equal protection" guarantee because a class of people defined by a single trait — people who favor establishment of religion — are denied equal "participation" in politics because in order to achieve their agenda they must amend the Constitution.)

In affirming the Colorado court's decision, the Supreme Court stressed that the amendment was a mere act of "animosity" against homosexuals, unrelated to a legitimate governmental purpose. The Court said it is "impossible" to believe that Coloradans really were worried about their associational rights, and implies that protecting traditional sexual mores is not a legitimate governmental goal.

The Court falsely asserted that the Colorado amendment's disqualification of a class of persons identified by "a single trait" from the right to obtain specific protection in the law is "unprecedented." Under the Arizona, Idaho, Utah, New Mexico and Oklahoma constitutions, polygamy is "forever prohibited." Since Monday, either those provisions are unconstitutional or polygamists have fewer constitutional rights than homosexuals.

Scalia notes that Colorado, far from being seized by blind intolerance, is one of 25 states that have repealed laws criminalizing homosexual behavior, and that 46 percent of the voters opposed the amendment, which only prohibits giving homosexuals favored status because of their conduct. Homosexuals, Scalia argued, have the right of all Americans to seek, as they have done, to use democratic persuasion to change the legal system for "reinforcement of their moral sentiments." But they should be subject to democratic countermeasures, such as Colorado's amendment, which was a "modest attempt . . . to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws."

The Court, says Scalia, has departed from anything recognizable as constitutional reasoning. Instead, it has taken sides in a cultural struggle on behalf of the views prevalent in a particular class and against the views represented in Congress, which has repeatedly refused to extend to homosexuals the protections of federal civil rights laws. Because the Constitution is silent on this subject, "it is left to be resolved by normal democratic means," and the Court "has no business imposing upon all Americans the resolution favored by the elite class from which the members of this institution are selected, pronouncing that 'animosity' toward homosexuality is evil."

To what has constitutional law come? "Terminal silliness," says Scalia. Monday's decision indicates that the condition is indeed terminal if constitutional law is supposed to be the application of principles derived from a respectful reading of the Constitution's text, and an interpretation of its structure, in the light of the Framers' intentions.

Will is a syndicated columnist.

After landmark decision, what's next for gay rights?

By **Deb Price**

Savor this moment. Treasure it. The Supreme Court handed down the most important victory in the history of the gay rights movement Monday. And the United States of America took a magnificent stride toward justice.

In forcefully striking down a 1992 amendment to Colorado's constitution singling out gay men and lesbians for discriminatory treatment, the court broke with its own anti-gay past to declare that hatred is not a legitimate reason to treat gay Americans as second-class citizens. Writing for the 6-3 majority, Reagan appointee Anthony Kennedy immediately drew a powerful parallel between the fight for gay civil rights and the fight for racial equality. His opinion opened by pointing to the dissent from the court's infamous "separate but equal" decision in Plessy vs. Ferguson in 1896.

"One century ago, the first Justice (John Marshall) Harlan admonished this court that the Constitution 'neither knows nor tolerates classes among citizens.' Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake," Kennedy wrote. That commitment, embodied in the U.S. Constitution's Equal Protection Clause, makes Colorado's Amendment 2 unconstitutional, he added.

Amendment 2, which sparked a multimillion-dollar boycott of Colorado after its voters narrowly enacted it, would have rendered state and local officials powerless to combat discrimination against gay people but not against any other group. Because Amendment 2 raised the issue of whether minority political rights are dependent on the whims of the majority, the Supreme Court could have overturned it without ever mentioning gay men and lesbians.

The impact of Monday's ruling will be all the more far-reaching because the court instead talked directly of "gays and lesbians" and the hostility — or "animus" — toward us that underlies Amendment 2. Scoffing at the argument that Amendment 2 simply would have denied gay people "special rights," Kennedy wrote, "We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them . . ."

Issued just weeks before the 10th anniversary of the outrageous Supreme Court 5-4 decision upholding anti-gay sodomy laws, the Amendment 2 ruling shows how far the court has traveled in a decade. Justice Sandra Day O'Connor deserves part of the credit for that progress. One of three current justices who heard both cases, she this time voted against prejudice.

Although the majority didn't mention the sodomy ruling, Justice Antonin Scalia's acid-filled dissent hailed it as "unassailable" and Amendment 2 as "eminently reasonable." Writing for himself, Chief Justice William Rehnquist and Justice Clarence Thomas, Scalia sounded eerily like Pat Buchanan, talking in German of a cultural war "Kulturkampf" — and of Colorado's "modest attempt . . . to preserve traditional sexual mores."

The rabidness of Scalia's dissent is one measure of the importance of the majority ruling. This conservative, tradition-bound court is now telling the nation that anti-gay laws cannot stand if they serve no legitimate purpose and that hurting gay people is not a legitimate purpose. Though the ruling knocks down only Amendment 2, anti-gay laws like the military's ban will be challenged by lawyers pointing to that new, groundbreaking standard.

The ruling is a massive defeat for religious and political extremists who've argued gay Americans seek special rights, and that discrimination against us cannot be compared to racial bias. The court demolished both arguments.

In standing up for the basic constitutional rights of gay citizens, the Supreme Court declared that no state can "deem a class of persons a stranger to its laws."

Gay people went to the halls of justice as strangers. And the Supreme Court took us in.

Price, of The Detroit News' Washington bureau, writes this gay-issues column and is co-author with Joyce Murdoch of "And Say Hi to Joyce: America's First Gay Column Comes Out."

BEST BETS

FOR JAZZ'S SAKE: If you haven't yet been to Bogart's in Rockrimmon for the Wednesday night Contemporary Big Band Ensemble, you're missing a house-shakin' time. 6 to 8 p.m., 5943 Delmonico Drive. Free.

BREAK OUT THE LIGHTERS: Lynyrd Skynyrd and the Doobie Brothers team up for a classic-rock concert Homer Simpson would love at 7 tonight at Fiddler's Green in Denver. $18.50-$22.50.

GARDEN VARIETY: The Broadmoor Garden Club's annual sale is from 10 a.m. to 3 p.m. at Bear Creek Park, off 21st Street.

An aide of Princess Diana denied a tabloid's report that Di plans to pay $7.5 million for the New York apartment once owned by Jacqueline Kennedy Onassis, whose kids reportedly sold it to billionaire David Koch for $9.5 million.

'Circus' Mommy getting new 'do'

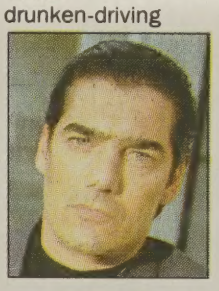
After 36 years with a bob and pointy flip, Mommy has a new hairdo — thanks to a reader's suggestion that the character in the comic strip "Family Circus" was looking a bit *passe*. On Thursday, Gazette readers will get to see the new look. Bil Keane says he tries to keep the comic family up with the times, adding, "The kids are playing with Nintendo instead of Tinkertoys."

Short takes

■ "Waiting to Exhale" director **Forest Whitaker** pleaded innocent Tuesday in Los Angeles to drunken driving. Whitaker, 34, was stopped for speeding before dawn March 20. Prosecutors said a breath test showed a blood-alcohol level of 0.13 percent. The legal limit is 0.08.

■ **Hawaii Gov. Ben Cayetano** has filed for divorce from his wife Lorraine. The couple, married 37 years, have three grown children.

■ "Wiseguy" star **Ken Wahl** received six months' probation after pleading no contest to a charge of disturbing the peace in Malibu. Wahl was arrested in January on an outstanding warrant for drunken driving after a neighbor called deputies to complain of loud music at the actor's home. Wahl pleaded no contest to the drunken-driving charge earlier this year and received probation.



Wahl

■ **Larry King** introduced Cyndy Truhan, ex-baseballer Steve Garvey's ex, as "my significant other" at a luncheon in Washington. Truhan, 46, has six criminal charges pending in Santa Monica, Calif., for allegedly lying about being stalked. Meanwhile, ex-boyfriend Hans Rockenwagner got a restraining order accusing her of stalking him and Garvey got one against her, accusing her of threatening his current wife, Candace.

■ **Deezer D.,** nurse Malik McGrath on "ER," was ordered to appear in court next month to answer charges of resisting arrest and making a harassing phone call. San Bernardino County, Calif., police subdued D. after he refused to leave a supermarket where his girlfriend works.

News services

Fox moving 'X-Files,' 'Married . . .'

News services

Next year, Agent Mulder works on Sundays. Fox will move "The X-Files" from Fridays in the fall to make way for a new series from X-Files creator Chris Carter.

"Millennium," about horrific events at the end of the 20th century, will take the Friday-at-8 p.m. spot the science-fiction hit "X-Files" has held for three seasons. In it a former FBI agent moves to Seattle to save the world.

The network is adding only five new shows for the 1996-97 season while shedding "Partners," "Profit," "Kindred: The Embraced," "Strange Luck," "The Crew" and "Space: Above and Beyond." "Married . . . with Children" moves to Saturday nights.

The low-rated cult series "Sliders" got a surprise renewal.

The new shows:

■ "Party Girl," Monday after "Melrose Place." An adaptation of the cult film about a woman described as the toast of the New York party scene.

■ "Lush Life," following "Party Girl." Lori Petty ("A League of Their Own") and Karyn Parsons ("The Fresh Prince of Bel-Air") appear as young roommates in New York City.

■ "L.A. Firefighters." "ER" in the firehouse is how this Sunday drama is described. It starts a summer run June 3.

■ "Come Fly With Me," Saturday nights. A sitcom about two hard-working, financially strapped parents with three kids. Alicia Bergman stars.

For midseason, Fox is picking up "Secret Service Guy," a sitcom with Judge Reinhold ("Beverly Hills Cop").

NBC sweeps the Nielsens

Associated Press

NEW YORK — NBC's regularly scheduled Thursday shows ran 1-2-3-4-5, giving the network a solid Nielsen victory in the third week of the May ratings sweeps.

NBC's emotional couple-splits "Mad About You" tied with ABC's "Home Improvement" for sixth place, and NBC's Monday movie, "Twisted Desires," tied for 10th place to give NBC seven of the Top 10 shows, according to Tuesday's Nielsen release.

In second place for the week was ABC, whose strong "Roseanne" episode was in eighth place and powerful "NYPD Blue" story line about Andy Sipowicz's tragic return to alcoholism was in ninth.

TOP 25 PRIME-TIME SERIES

1. (1) **"ER,"** NBC.
2. **"Seinfeld"** NBC.
3. **"Caroline in the City,"** NBC.
4. **"Friends,"** NBC.
5. **"Single Guy,"** NBC.
6. **"Home Improvement,"** ABC.
6. **"Mad About You,"** NBC.
8. **"Roseanne,"** ABC.
9. **"NYPD Blue,"** ABC.
10. **"Coach,"** ABC.
10. **Movie: "Twisted Desire,"** NBC.

TV NEWS

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MOVIES SPORTS NEWS

6 PM	6:30	7 PM	7:30	8 PM	8:30	9 PM	9:30	10 PM	10:30	11 PM	11:30
Home Improvement ∩ (CC) 261	Home Improvement ∩ (CC) 613	Sister, Sister (R) ∩ (CC) 5803	Parent 'Hood (R) ∩ (CC) 975	Wayans Bros. (R) ∩ (CC) 4551	Unhappily Ever After ∩ (CC) 8218	News 2667		Roseanne ∩ (CC) 11551	Star Trek: The Next Generation "Imaginary Friend" ∩ (CC) 66445		Ricki Lake 38349
CBS News (CC) 629	News (CC) 209	Young and the Restless ∩ (CC) 1551		Daytime Emmy Awards (Tape Delay) ∩ (CC) 8087				News (CC) 6981290	(10:36) Late Show ∩ (CC) 13633087		Late Late (CC) 2482938
Hard Copy Airline passenger lands plane. (CC) 2209	Entertainment Tonight Anna Nicole Smith. ∩ (CC) 6261	JAG "Ares" (Season Finale) A destroyer's sabotaged master computer sends Rabb toward hostile North Korean waters. ∩ (CC) 19629		Dateline Families of con artists who travel from town to town offering to do odd jobs. ∩ (CC) 28377		Law & Order "Aftershock" (Season Finale) Briscoe, Curtis, McCoy and Kincaid witness an execution. ∩ (CC) 35613		News 8044803	(10:35) Tonight Show Actress Heather Locklear, actor-comic Anthony Clark, singer Suzanne Vega. ∩ (CC) 41234984	(11:37) Cheers Diane rethinks her refusal of Sam. ∩ (CC) 7483803	
Newshour With Jim Lehrer (CC) 96700		Aerial Britain ∩ 37071		New Explorers "Outsmarting the Brain" ∩ (CC) 26919		Nichols and May -- Take Two "An American Masters Special" (CC) 39483		One Foot in the Grave 64667	Are You Being Served? 40087	Charlie Rose ∩ 65735	
Jeopardy! (CC) 7377	Wheel-Fortune (CC) 8629	Ellen (R) ∩ (CC) 1483	Drew Carey (R) ∩ (CC) 4613	Home Improve. (CC) 7803	Grace Under (CC) 6938	Primetime Live (CC) 33209		News (CC) 8966071	Nightline (CC) 9327629	Inside Edition (CC) 6907822	Am.Journal (CC) 7305071
Newshour With Jim Lehrer (CC) 94396		New Explorers "Outsmarting the Brain" ∩ (CC) 35667		Nichols and May -- Take Two: American Masters (CC) 11087		Sonja Henie: Queen of the Ice ∩ (CC) 24551		Forgotten People: The Sakhalin Koreans ∩ (CC) 34938		Newshour With Jim Lehrer (CC) 50803	
News (CC) 5193	Ent. Tonight (CC) 6445	JAG "Ares" (Season Finale) ∩ (CC) 71483		Dateline ∩ (CC) 57803		Law & Order "Aftershock" (Season Finale) ∩ (CC) 77667		News (CC) 2628483	(10:35) Tonight Show ∩ (CC) 37159209		(11:37) Cheers (CC) 8501358
Wheel of Fortune (CC) 1731	Jeopardy! (CC) 8613	Young and the Restless The lives of Victor, Jack, Nikki and the other inhabitants of Genoa City, Wis., are chronicled. ∩ (CC) 66551		Daytime Emmy Awards Eric Braeden and Melody Thomas Scott host the 23rd annual awards presentation honoring the best in daytime programming. From New York. (Tape Delay) ∩ (CC) 53087				News 2613551	(10:35) Late Show Author Joe Queenan, singer Al Green, actress Brett Butler. ∩ (CC) 37144377		(11:37) Married... With Children Bundys win a trip. (CC) 8529754
Roseanne Dan is in charge of the children. ∩ (CC) 8209	Coach Dauber is stood up on Valentine's Day. ∩ (CC) 2261	Ellen "Lobster Diary" Ellen tries to set a lobster free. (R) ∩ (CC) 2919	Drew Carey Kate's mother meets Jay. (R) ∩ (CC) 8445	Home Improvement Tim joins a literary group. (R) ∩ (CC) 1667	Grace Under Fire Rick gets a new job offer. (R) ∩ (CC) 4254	Primetime Live An investigation into possible deadly situations in commuter trains. (CC) 13483		News 8783483	(10:35) Seinfeld Hypochondriac George seeks advice. (CC) 3719261	(11:05) Nightline "America in Black and White" (CC) 6976700	(11:35) Extra ∩ (CC) 2443648
Home Improvement Randy and Brad argue loudly. ∩ (CC) 54209	Simpsons Bart and Lisa try to save puppies. ∩ (CC) 38261	Beverly Hills, 90210 "You Say It's Your Birthday" (Season Finale) Prince Carl and the gang celebrate Steve's 21st birthday; Valerie goes to the FBI. ∩ (CC) 37803				Sentinel "Attraction" Ellison's infatuation gets in the way of a robbery investigation. ∩ (CC) 57483		Baywatch "Aftershock" Mitch's wedding plans are jeopardized; Logan and Matt fight over Caroline. ∩ (CC) 54342		Rush Limbaugh 27759	Real Stories of the Highway Patrol 51236
Behind Scenes 7998984	Creflo A. Dollar Jr. 9959006	Memories 9502822	Jack Van Impe 9948990	Praise the Lord 1431464				Jerry Savelle 2549919	Jesse Duplantis 2558667	Myles Munroe 9248938	Benny Hinn 1027445
Sports Talk 47919	Minor League Baseball Colorado Springs Sky Sox vs. Las Vegas Stars. (Live) 358087							Bob Enyart (Live Phone-In) 43280		Rush Limbaugh 24667	Lester Sumrall 21754
Off the air locally											
Biography "Betty Grable: Behind the Pinup" (R) 207984		American Justice "Crimes of Passion: The Pamela Smart Story" 774071		20th Century "Sexual Harassment and Pornography" 863919		Law & Order "Renunciation" 876483		Biography "Betty Grable: Behind the Pinup" (R) 773342		American Justice "Crimes of Passion: The Pamela Smart Story" (R) 829735	
Remember WENN (R) (CC) 604613	Movie: ★★★½ Jim Thorpe, All American (1951, Biography) Burt Lancaster, Phyllis Thaxter, Charles Bickford. A look at the life of one of America's greatest athletes. 958209			Movie: ★★★ Reap the Wild Wind (1942, Adventure) Ray Milland, John Wayne, Paulette Goddard. An epic of piracy and rival salvagers in 1840s Florida. 6519261				(10:45) WENN (CC) 4387396		(11:15) Movie: ★★★½ Jim Thorpe, All American (1951) Burt Lancaster. 7322613	
Video Soul 224174				Comicview		Caribbean Rhythms 451087	Screen 805957	Rap City 591358			
Movie: ★★★ Alice (1990) Mia Farrow, Alec Baldwin. An herbalist sparks a woman's journey toward self-discovery. 506700				Inside the Actors Studio Sidney Lumet. (R) 687629		Movie: ★★★ The Sterile Cuckoo (1969, Drama) Liza Minnelli. A naive freshman falls for an outrageously wacky coed. 680716				Nanci Griffith: Other Voices, Other Rooms (R) 844087	
News (CC)	Politics (CC)	Larry King Live (CC) 405919		World Today 414667		Sports (CC)	Moneyline	NewsNight	Showbiz Today	Politics (CC)	Sports (CC)
TimAllen 98667	Tim Allen: Men	Robin Williams 79629		Dream On	A-List (CC)	Politically Inc.	Saturday Night Live 986754	Dream On		Politically Inc.	Kids 49174
Popular Mechanics (R) 385716		Wings General Dynamics F-111 fighter-bomber. (R) 852803		Beyond 2000 4785483	(8:35) Next Step 49819700	Wild Discovery "Hunters in the Underworld" (R) 858087		Invention (R) 578984	Next Step 650532	World's Greatest Stunts Part III (R) 834667	
Emmy Pre-Shw 953209		Talk Soup	News 403713	David Letterman 889025		Stern 131990	Stern 673551	Talk Soup (R)	News 942193	Gossip 143735	WKRP 651984
(5:30) Major League Baseball California Angels at Baltimore Orioles. From Oriole Park at Camden Yards. (Subject to Blackout) (Live) (CC) 703667				Major League Baseball New York Mets at Los Angeles Dodgers. From Dodger Stadium. (Live) (CC) 429193							Sportscenter 653377
Auto Racing	16 Days of Glory 4177236		16 Days of Glory 8579629	Centennial Gold 5184006		RPM 8543667		Speed 2532629	Go Kart Racing	Drag Racing	Soccer
Prime Time Playhouse 1973613	Black Stallion	Brooklyn Brid.		Heroes of the Heart 6515261		Campbells	Sullivans	Prime Time Playhouse 6432984		Black Stallion	Brooklyn Brid.
Highway Hvn. (CC) 483342		Rescue 911 ∩ (CC) 276241		700 Club 115919		Three Stooges 128483		Bonanza 626782		Paid 470358	Paid 378551
Road to Glory 5376735		Movie: ★★★ The Jesse Owens Story (1984) 9491648				Year by Year "1930" 2352667		Road to Glory 2355754		Jesse Owens 5364613	
Unsolved Mysteries ∩ 569716		Movie: ★★★ Miracle Landing (1990, Drama) Wayne Rogers. A crippled airliner's crew attempts to land the plane. 991993				Unsolved Mysteries ∩ 108629		Mysteries 752984	Late Date 834532	Nurses 476532	30something (CC) 810735
Music Videos ∩ 481984		Dave Matthews Band 533533		RealWrld	RealWrld	Singled 499483	Beavis 566629	Alternative Nation ∩ 521716			Dream 276377
Munsters 248071	Dream-Jeannie 335551	I Love Lucy (CC) 616938	Bewitched 331735	M.T. Moore (CC) 692358	Rhoda 604193	Welcome Back 129087	Taxi 388803	Dick Van Dyke 672754	Bob Newhart 658174	Munsters 124532	M.T. Moore (CC) 105667
Auto Racing ARCA 400. From Charlotte, N.C. (Live) 18532				USISL Soccer 19261		Press Box	Fishing 10087	Auto Racing: NASCAR 36984		Killer Bee	National 94648
(6:01) Quantum Leap "A Tale of Two Sweeties - February 25, 1958" ∩ (CC) 4371464		(7:01) Planet of the Apes "The Cure" 2801551		(8:01) Friday the 13th: The Series "Bedazzled" ∩ 2714071		Twilight Zone (CC) 9232174	(9:31) Monsters "Taps" 4383209	(10:01) Quantum Leap "Liberation - October 16, 1968" ∩ (CC) 2800822		(11:01) Planet of the Apes "The Cure" 5389396	
(6:05) Movie: ★★ More Needful Things (1993, Horror) (Part 1 of 2) Max von Sydow, Ed Harris, Bonnie Bedelia. The devil opens a curio shop in a small Maine town. 8391700				(8:05) Movie: ★★ More Needful Things (1993, Horror) (Part 2 of 2) Max von Sydow, Ed Harris, Bonnie Bedelia. The devil opens a curio shop in a small Maine town. 7754862				(10:05) Movie: ★★½ The Fog (1980, Horror) Adrienne Barbeau, Jamie Lee Curtis, Hal Holbrook. A 100-year-old curse plagues a sleepy seaside village. 1576862			
(5:00) Movie: ★★★ Old Acquaintance (1943) 1813342		Movie: ★★★ The Horn Blows at Midnight (1945) Jack Benny, Alexis Smith. 4492193			Movie: ★★½ The Two Mrs. Carrolls (1947) Humphrey Bogart, Barbara Stanwyck. 94504551			(10:15) Movie: ★★ Cimarron (1960) Glenn Ford. A pioneering couple is determined to succeed in Oklahoma. 37926694			
Ultrascience	Scientific-	Wondr Weathr	Connections2	Science Frontiers "Trauma: Life			Scientific-	Wondr Weathr	Connections2	Science Frontiers "Trauma: Life	